

**Arizona Game and Fish Commission
2016 Five-Year-Review Report**

**TITLE 12. NATURAL RESOURCES
CHAPTER 4. GAME AND FISH COMMISSION
ARTICLE 5. BOATING AND WATER SPORTS**

**Prepared for the
Governor's Regulatory Review Council**



ARIZONA GAME AND FISH COMMISSION
12 A.A.C. 4, ARTICLE 5. BOATING AND WATER SPORTS
2016 FIVE-YEAR REVIEW REPORT
TABLE OF CONTENTS

INTRODUCTION	FIVE-YEAR REVIEW REPORT: ARTICLE 5. BOATING AND WATER SPORTS	PAGE
--------------	---	------

RULE NUMBER	TITLE	PAGE
R12-4-501.	Boating and Water Sports Definitions	4
R12-4-502.	Application for Watercraft Registration	7
R12-4-503.	Renewal of Watercraft Registration	12
R12-4-504.	Watercraft Fees; Penalty for Late Registration; Staggered Registration Schedule	15
R12-4-505.	Hull Identification Numbers	20
R12-4-506.	Invalidation of Watercraft Registration and Decals	24
R12-4-507.	Transfer of Ownership of an Abandoned or Unreleased Watercraft	27
R12-4-508.	New Watercraft Exchanges	31
R12-4-509.	Watercraft Agents	34
R12-4-510.	Refund of Fees Paid in Error	37
R12-4-511.	Personal Flotation Devices	40
R12-4-512.	Fire Extinguishers Required for Watercraft	44
R12-4-513.	Watercraft Accident and Casualty Reports	48
R12-4-514.	Liveries	51
R12-4-515.	Display of AZ Numbers and Registration Decals	54
R12-4-516.	Watercraft Sound Level Restriction	58
R12-4-517.	Watercraft Motor and Engine Restrictions	61
R12-4-518.	Regattas	65
R12-4-519.	Reciprocity	68
R12-4-520.	Arizona Uniform State Waterway Marking System	71
R12-4-521.	Placing or Tampering with Regulatory Markers or Aids to Navigation	75
R12-4-522.	Establishment of Controlled-Use Markers	78
R12-4-523.	Controlled Operation of Watercraft	81
R12-4-524.	Water Skiing	84
R12-4-525.	Revocation of Watercraft Certificate of Number, AZ Numbers, and Decals	88
R12-4-526.	Unlawful Mooring	91
R12-4-527.	Transfer of Ownership of a Towed Watercraft	95
R12-4-528.	Watercraft Checkpoints	99
R12-4-529.	Nonresident Boating Safety Infrastructure Fees; Proof of Payment; Decal	102

REPORT: ARTICLE 5. BOATING AND WATER SPORTS

Under A.R.S. § 41-1056, every agency shall review its rules at least once every five years to determine whether any rule should be amended or repealed. Each agency shall prepare a report summarizing its findings, its supporting reasons, and any proposed course of action; and obtain approval of the report from the Governor's Regulatory Review Council (G.R.R.C.).

G.R.R.C. determines the review schedule. The Arizona Game and Fish Commission's rules listed under Article 5, Boating and Water Sports, are scheduled to be reviewed by February 2016.

The Arizona Game and Fish Department (Department) tasked a team of employees to review the rules contained within Article 5. The Department prepared a report of its findings based on G.R.R.C. standards. In its report, the review team addressed all internal comments from agency staff as well as comments received from the public. The team took a customer-focused approach, considering each comment from a resource perspective and determining whether the request would cause undue harm to the state's wildlife or negatively affect the Department's wildlife objectives. The review team then determined whether the request was consistent with the Department's overall mission, if it could be effectively implemented given agency resources, and if it was acceptable to the public.

The Department anticipates requesting an exception to the rulemaking moratorium by June 2016 and submitting the Notice of Final Rulemaking for actions proposed in this report to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

With this report, the Department also certifies its compliance with the requirements of A.R.S. § 41-1091. The Department certifies the following:

1. The Department publishes an annual directory summarizing the subject matter of all currently applicable rules and substantive policy statements;
2. The Department maintains a copy of the directory and all substantive policy statements at the Arizona Game and Fish Department Headquarters, 5000 W. Carefree Highway, Phoenix, Arizona 85086;
3. The Department includes the notice specified under A.R.S. § 41-1091(B) on the first page of each substantive policy statement; and
4. The Department provides the directory, rules, substantive policy statements, and any other material incorporated by reference in the directory, rules or substantive policy statements. These documents are open to public inspection at the Department Headquarters, 5000 W. Carefree Highway, Phoenix, Arizona 85086.

R12-4-501. BOATING AND WATER SPORTS DEFINITIONS

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish definitions that assist the regulated community and members of the public in understanding the unique terms used throughout 12 A.A.C. Chapter 4, Article 5. The rule was adopted to facilitate consistent interpretation of, and to prevent the regulated community from misinterpreting, the intent of Commission rules.

- 3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

In 2013, A.R.S. § 5-327 was amended to authorize the Commission to assess a nonresident boating safety infrastructure fee for each watercraft registered in this state by a nonresident as defined in section 5-301. The Department proposes to amend the rule to reference the rule that establishes the nonresident boating safety infrastructure fee, R12-4-529.

In 2014, 33 C.F.R. 175 was amended to define "wearable" and "throwable" Personal Flotation Devices (PFDs). A throwable PFD means a U.S. Coast Guard approved Type IV device for use on any watercraft such as, but

not limited to, a buoyant cushion, ring buoy, or horseshoe buoy. A wearable PFD means a U.S. Coast Guard approved Type I, Type II, Type III, or Type V device for use on any watercraft such as, but not limited to, an off-shore lifejacket, near-shore buoyant vest, special-use wearable device, or flotation aid. The Department proposes to amend the rule to revise the definition for "personal flotation device" and define "wearable" and "throwable" PFDs in order to maintain consistency between the rule and the corresponding federal regulation as required under A.R.S. § 5-311. In addition, the Department proposes to amend the definition of "abandoned watercraft" to reflect consistent time-frames on public lands and waterways and support the intended purpose of proposed changes made to R12-4-526.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

Enforcement of the rule manifests itself through proper administration. Enforcement is directed to a rule or an order in which a definition is used. It is not the term that is cited, but the violation. To the extent that the Department is aware, there have been no problems with enforcement. Providing definitions for the unique terms used in Article 5 assist the public, Department personnel, and members of law enforcement in understanding the contents and meaning of Article 5 rules.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to transfer all definitions contained in other Article 5 rules to this rule; clarify definitions where applicable; define "junk watercraft" and "Nonresident Boating Safety Infrastructure Decal;" and remove the reference to "flat wake under A.R.S. § 5-350" from the definition of "no wake." The rule was also amended to reflect changes made to U.S. Coast Guard regulations regarding the state of principal operation. The Commission anticipated the proposed amendments would have little or no impact on the Department or regulated community.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes the definitions for unique terms specific to rules contained within Article 5 that assist the public, Department personnel, and law enforcement in understanding the contents and meaning of Article 5 rules. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulation 33 C.F.R. 187 is applicable to the subject of the rule. 33 C.F.R. 187.303 establishes the terms a state must define in order to participate in the Vessel Identification System (VIS). The Department has determined the rule is not more stringent than the corresponding federal law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-501 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Reference the rule that establishes the nonresident boating safety infrastructure fee, R12-4-529, as A.R.S. § 5-327 was amended to authorize the Commission to assess a nonresident boating safety infrastructure fee for each watercraft registered in this state by a nonresident as defined in section 5-301.
- Revise the definition for "personal flotation device" and define "wearable" and "throwable" PFDs in order to maintain consistency between the rule and the corresponding federal regulation as required under A.R.S. § 5-311.
- Revise the definition of "abandoned watercraft" to reflect consistent time-frames on public lands and waterways and support the intended purpose of proposed changes made to R12-4-526.

R12-4-502. APPLICATION FOR WATERCRAFT REGISTRATION

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(5), 5-321, 5-322, 5-326, and 5-327

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish watercraft registration application requirements. The rule was adopted to ensure the Department provides and maintains the necessary information required under 33 C.F.R. 187 Vessel Identification System (VIS), which prescribes the owner and vessel information requirements for States electing to participate in VIS. On an annual basis, the Department registers approximately 18,000 watercraft that are either new watercraft or new to this state.

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

A.R.S. § 5-321(A) states, "the application shall be signed by the owner of the motorized watercraft..." The Department proposes to amend the rule to establish signature requirements for watercraft owned by more than one person, a business, or held in a trust. In addition, A.R.S. § 5-301(13) defines resident as a person who is domiciled in this state for at least six consecutive months immediately before the date of the application for a watercraft decal and who does not claim residency for any purpose in any other state or country. The Department proposes to amend the rule to require an applicant for a watercraft registration to complete and sign a residency statement.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written. However, the Department proposes to amend the rule to require the owner's signature on the release of interest to be acknowledged before a Notary Public or witnessed by a Department

employee when the person is registering a watercraft in Arizona for the first time, but is not listed as the owner on the current registration and the signature of the buyer or seller is in question. This typically occurs when the release of interest contains a printed signature or the signature on another document submitted along with the release of interest does not match the person's signature on the release of interest. The Department will attempt to verify the person's signature by reviewing related records. If no record exists or if it cannot be determined that the signature is valid, the Department will require the owner's signature on the release of interest to be acknowledged before a Notary Public or witnessed by a Department employee. This is necessary to ensure that the person signing the application or the release of interest has the authority to do so. The fraudulent or unauthorized transfer of watercraft has been a chronic problem for years and is increasing in frequency. The unauthorized transfer of watercraft requires law enforcement investigative intervention or civil court intervention to overcome, which could be avoided by signature verification. Unauthorized transfers occur approximately 10 to 12 times a year, but can involve hundreds of thousand dollars of property. In addition, the rule allows the Department to require an owner to present their watercraft for inspection when the information provided by the applicant is inaccurate. The Department also proposes to amend the rule to require the owner to present their watercraft for inspection when the applicant is unable to provide the required information. In addition, the Department is aware of instances where a watercraft dealer certificate of number is used by employees and/or family members of the dealership for personal recreational purposes, in violation of A.R.S. §§ 5-321(A) and 5-322(F). The Department proposes to amend the rule to state a watercraft dealer registration used in violation of A.R.S. § 5-322(F) may result in the invalidation of that watercraft dealer registration as authorized under R12-4-506.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the

rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to establish that only motorized watercraft are subject to registration; require an applicant to provide their mailing address; require the applicant's signature on the Statement of Fact form to be either witnessed or notarized; and repeal language requiring the owner of a commercial watercraft to provide proof of ad valorem property tax payment. The Commission anticipated requiring the applicant's signature on the Statement of Fact form to be either witnessed or notarized would impact persons regulated by the rule due to the time taken to go to a Department office or a notary, whichever is more convenient as determined by the applicant. In addition, a notary service fee may apply, however R2-12-1102 limits the notary fee to \$2 per signature.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the minimum requirements necessary to create a watercraft record for a watercraft. The information and documentation specified within the rule are necessary to sufficiently identify the owner of the watercraft and the watercraft itself. In addition, the inspection of a homemade watercraft is necessary to prevent the Department from registering a stolen watercraft and assigning a conforming hull identification number (when applicable). The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulation 33 C.F.R. 187 is applicable to the subject of the rule. 33 C.F.R. 187 prescribes the minimum owner, vessel, and record information requirements for States electing to participate in VIS. The Department has determined the rule is not more stringent than the corresponding federal law.

Federal regulation 33 C.F.R. 174 is applicable to the subject of the rule. 33 C.F.R. 174 prescribes a standard numbering system for vessels applicable to States for approval of State numbering systems. The Department has determined the rule is not more stringent than the corresponding federal law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule complies with A.R.S. § 41-1037. The certificate of number described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-502 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Establish signature requirements for watercraft owned by more than one person, a business, or held in a trust.
- Require an applicant for a watercraft registration to complete and sign a residency statement.
- Require the owner's signature on the release of interest to be acknowledged before a Notary Public or witnessed by a Department employee when the person is registering a watercraft in Arizona for the first

time, but is not listed as the owner on the current registration and the signature of the buyer or seller is in question.

- Require the owner to present their watercraft for inspection when the applicant is unable to provide the required information.
- Establish a watercraft dealer registration used in violation of A.R.S. § 5-322(F) may result in the invalidation of that watercraft dealer registration as authorized under R12-4-506.

R12-4-503. RENEWAL OF WATERCRAFT REGISTRATION

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(5), 5-321, 5-326, and 5-327

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish watercraft registration renewal requirements when the renewal is made in person, through the mail, or online. The rule was adopted to provide watercraft registration renewal requirements to the regulated community. On an annual basis, the Department renews approximately 101,660 watercraft registrations. Of those registration renewals, 32% are processed through the Department's online watercraft registration system.

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation. While the rule requires watercraft owners to renew their watercraft registration before it expires, many watercraft owners wait until early spring or summer to renew their watercraft registration in conjunction with boating season, which results in a high volume of renewal requests in a short time span. To address this issue, the Department conducts outreach activities designed to encourage watercraft owners to become familiar with watercraft laws and registration requirements. Activities include sending renewal notices, providing watercraft registration renewal information on the Department's website, emailing newsletters, and issuing press releases.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to remove language regarding the mailing of the renewal notice; require the watercraft owner to renew a watercraft registration before it expires; remove language regarding the ability to register a watercraft by telephone; and remove language referencing the Department's registration renewal time-frame. The Commission anticipated the

proposed amendments would have little or no impact on the Department or regulated community.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes the requirements an applicant must meet in order to obtain a watercraft registration renewal. The information specified within the rule is necessary to identify the owner of the watercraft and ensure the correct watercraft registration is renewed. Currently, a person may only obtain a duplicate watercraft registration by mail or in person at a Department office. A person who discovers they have misplaced their registration on a weekend or holiday cannot obtain a duplicate watercraft registration any sooner than the next business day. The Department proposes to allow a person to obtain a duplicate registration online via the Department's online watercraft registration system. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

- 12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

- 13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule complies with A.R.S. § 41-1037. The registration renewal described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-503 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Establish a person to obtain a duplicate registration online via the Department's online watercraft registration system.

**R12-4-504. WATERCRAFT FEES; PENALTY FOR LATE REGISTRATION;
STAGGERED REGISTRATION SCHEDULE**

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(5), 5-321(H), 5-321(K), and 5-321.01

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish motorized watercraft registration, watercraft transfer, duplicate registration and decal, and dealer certificate of number fees, penalty for late registration, and a staggered watercraft registration schedule. The rule was initially adopted to establish the late registration penalty fee and various staggered schedules for the different types of watercraft registrations offered by the Department. The

motorized watercraft registration, watercraft transfer, duplicate registration and decal, and dealer certificate of number fees were added to implement legislative amendments resulting from Laws 2013, 1st Regular Session, Ch. 197, Section 25 (Senate Bill 1223).

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The Department is not aware of any problems with the enforcement of the rule. The Department recognizes that a watercraft is not a necessity and that a person can choose when to register and use their watercraft. While the rule requires watercraft owners to renew their watercraft registration before it expires and establishes a staggered registration schedule, many watercraft owners wait until early spring or summer to renew their watercraft registration in conjunction with boating season. This results in a high volume of renewal requests in a short time span. To address this issue, the Department sends renewal notices and conducts outreach activities designed to encourage watercraft owners to become familiar with watercraft laws and registration requirements, take a boating education class, and exercise safe boating practices.

The current watercraft fees have been in place for over 28 years; the resources the Department expends processing the following transactions is far greater than the revenue generated from these transactions: duplicate watercraft registrations (\$2), duplicate decals (\$2), watercraft transfers (\$4), and abandoned/unreleased applications (no charge). Under A.R.S. § 5-323(1)(a), 65% of the watercraft registration revenue shall be used to administer and enforce this chapter, provide an information and education program relating to boating and boating safety and administer any aquatic invasive species program. Resources spent processing duplicate watercraft registrations, duplicate decals, watercraft transfers, and abandoned/unreleased applications in excess of revenues received for providing those services reduces the Department's ability to provide adequate law

enforcement patrol and support, reduces information and education program outreach relating to boating and boating safety and the aquatic invasive species program. The Department intends to conduct a costs analysis and evaluate whether or not these fees should be increased in compliance with A.R.S. § 5-328 which authorizes the Department to establish fees for watercraft registrations, nonresident boating safety infrastructure fees, watercraft transfers, duplicate certificates of number or annual decal, and dealer watercraft certificates of number provided the total amount of fees collected in any fiscal year may not exceed 50% or more than the amount appropriated from the watercraft licensing fund for fiscal year 2012-2013 (6.75 million dollars).

6. Clarity, conciseness, and understandability of the rule.

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. The Department waives the late registration renewal penalty fee when a watercraft registration expires on a Saturday, Sunday, or State holiday and provided the watercraft owner renews the watercraft registration in person or by mail before the close of business on the next working day. Because the Department's online watercraft registration system is accessible 24 hours a day (notwithstanding routine maintenance conducted during periods of low volume traffic), this exception does not apply to watercraft registrations that are renewed online. The Department proposes to amend the rule to establish the late registration renewal penalty fee exemption does not apply to a person who chooses to renew the watercraft registration via the Department's online watercraft registration system to make the rule more concise. The Department also proposes to amend the rule to specify the number of months of pro-ratio to clarify the current watercraft registration process for the first renewal period and allow a watercraft registration renewal to occur up to six months before the current expiration of the watercraft for the convenience of the applicant.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

On June 15, 2015, the Department received one written criticism regarding the late registration penalty fee and registration periods. The customer asked the Department to implement a "non-use waiver" by which a person could attest that they have not used the watercraft and allow the Department to waive the late registration penalty fee. In addition, the customer suggested the Department offer a permanent registration for very small boats.

Agency Response: The requirements for the late registration penalty fee are prescribed under A.R.S. § 5-321(L), which states, "On renewal of any motorized watercraft registration that has not been renewed by the current expiration date, the department shall assess a penalty unless the watercraft ownership has been transferred and the watercraft *was not* registered subsequent to the expiration date. The commission shall establish the penalty by rule. If more than twelve months have lapsed since the expiration date of the last registration or renewal, the penalty and back fees are waived." A legislative amendment is required before the Department may implement a "non-use waiver" as suggested by the commenter. In addition, A.R.S. § 5-311 requires all boating and water sport rules to comply with U.S. Coast Guard regulations. Under 33 C.F.R. 174.27 Duration of certificate of number, a certificate of number shall not be valid for more than three years. The federal rule would have to be amended before the Department could implement a "permanent registration" as suggested by the commenter.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

In 2015, the rulemaking moratorium was extended by way of Executive Order 2015-01. An exemption from Executive Order 2015-01 was provided for the last rulemaking by Ted Vogt, Chief of Operations in the Governor's office, in an email dated May 22, 2015. The Commission amended R12-4-504 to re-establish a watercraft transfer fee of \$4, a duplicate certificate of number or annual decal fee of \$2, and a dealer certificate of number fee of \$2.50 in rule. The last rulemaking moved three fees that were historically included in statute into rule, using the exempt rulemaking authority granted to the Commission by the Legislature. These nominal fees are the same fees currently charged by the Department and have been in place for over 28 years. Therefore, the Commission determined the rulemaking would have no impact on the regulated community.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was

approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes the motorized watercraft registration, watercraft transfer, duplicate registration and decal, and dealer certificate of number fees, penalty for late registration, and a staggered watercraft registration schedule in compliance with A.R.S. §§ 5-321 and 5-322. Watercraft registration renewal fees collected pursuant to A.R.S. § 5-321 are deposited in the watercraft registration fee clearing account and distributed as follows: 65% is deposited in the watercraft licensing fund which is used by the Department to provide informational and educational programs relating to boating and recreational boating law enforcement and to administer the Department's Aquatic Invasive Species Program; of the remaining 35%: 15% is distributed to the State Lake Improvement Fund and 85% is used for boating safety grants administered (Law Enforcement Boating Safety Fund). The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to

amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-504 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Establish the late registration renewal penalty fee exemption does not apply to a person who chooses to renew the watercraft registration via the Department's online watercraft registration system.
- Specify the number of months of pro-rata to clarify the current watercraft registration process for the first renewal period.
- Allow a watercraft registration renewal to occur up to six months before the current expiration of the watercraft for the convenience of the applicant.

R12-4-505. HULL IDENTIFICATION NUMBERS

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(5) and 5-321

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish Hull Identification Number (HIN) requirements in compliance with 33 C.F.R. 181. HINs are vital in establishing the identity of a watercraft for recall and warranty purposes, to aid in the recovery of stolen watercraft, and to research the chain of ownership of a watercraft. As a watercraft travels from state to state, the HIN is the unique identifier required under 33 C.F.R. 181. The rule was adopted to ensure compliance with U.S. Coast Guard vessel identification requirements. On an annual basis, the Department conducts approximately 1,900 inspections.

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation. Approximately 140 inspections result in finding an obstructed or indecipherable HIN (e.g., the HIN is altered, covered with paint, gel coat, an after-market part, or other obstruction that obstructs the HIN or makes it indecipherable). Of those boats that are seized due to an altered HIN, approximately 20 are determined to be a stolen watercraft. Even though statistics indicate most altered HINs are not concealing a stolen watercraft, the employee or officer has a duty to declare the HIN altered and seize the watercraft until the watercraft's status may be verified.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. However, there are other instances that allow the Department to accept a bill of sale with a missing or nonconforming HIN, such as a homemade watercraft or a watercraft manufactured prior to November 1, 1972. The Department proposes to amend the rule to address those scenarios.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to require the HIN for all watercraft manufactured after November 1, 1972; require watercraft owners to ensure the HIN is fully visible and unobstructed for all watercraft manufactured after August 1, 1984; and require watercraft owners to certify they have permanently affixed the Department assigned HIN to their watercraft within 30 days after receiving the Department assigned HIN. The Commission anticipated requiring watercraft owners to ensure the hull identification number (HIN) is fully visible and unobstructed for all watercraft manufactured after August 1, 1984 could result in minimal to significant costs when a person is required to relocate a swim platform or remove gel coat; these costs were estimated to range from \$200 to \$5,000, depending on the size of the watercraft or location of the after-market accessory. The Commission determined requiring a watercraft owner to certify they permanently affixed the Department-assigned HIN to their watercraft is the least burdensome way to comply with amendments made to U.S. Coast Guard regulations.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting

- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

A Department employee or law enforcement officer may inspect watercraft at a Department facility for the purpose of registering the watercraft in Arizona or on the water to determine whether the watercraft is in compliance with registration requirements or a possible stolen watercraft. As part of the inspection, the employee or law enforcement officer must verify the watercraft's HIN. On an annual basis, the Department conducts approximately 1,900 inspections, of which approximately 140 inspections result in finding an obstructed or indecipherable HIN. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulations 33 C.F.R. 181 and 33 C.F.R. 187 are applicable to the subject of the rule. 33 C.F.R. 181 prescribes requirements for the certification of boats and associated equipment and identification of boats to which 46 U.S.C. applies and 33 C.F.R. 187 prescribes the minimum owner, vessel, and record information requirements for States electing to participate in the Vessel Identification System (VIS). The Department has determined the rule is not more stringent than the corresponding federal laws.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-505 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Clarify rule by describing scenarios where the Department may accept a bill of sale with a missing or nonconforming HIN.

R12-4-506. INVALIDATION OF WATERCRAFT REGISTRATION AND DECALS

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(5), 5-321, 5-326, 5-327, and 5-391(I)

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the circumstances under which the Department shall invalidate a watercraft registration and provide the Department with the authority to refuse to register a watercraft until the reason for the invalidity is corrected or no longer exists. The rule was adopted to ensure compliance with U.S. Coast Guard certificate of number requirements. Invalidating the certificate of number when the applicant provided false or misleading information on the application or the certificate of number is used fraudulently ensures the integrity of the Department's watercraft registration system. When the proper fees or documentation have not been provided, invalidation of the watercraft registration also prevents a customer from renewing the registration or transferring ownership until the reason for invalidity has been corrected or no longer exists. For example: on an annual basis, the Department receives approximately 25 non-negotiable checks that were written for watercraft registration fees. By invalidating these registrations and preventing any future registrations, the Department is able to collect the fees due. On an annual basis, the Department invalidates approximately 1,300 watercraft registrations and decals under this rule.

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

However, the Department proposes to amend the rule to reflect changes made to R12-4-502 and R12-4-514. R12-4-502 was amended to state a watercraft dealer registration used in violation of A.R.S. § 5-322(F) may result in the invalidation of that watercraft dealer registration as authorized under R12-4-506. R12-4-514 was amended to address passenger for hire operations.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written; however the Department has found that dealer watercraft registrations are improperly being used for purposes that are not authorized by R12-4-502 (E). Specifically, the Department has discovered instances when the dealer registrations are being displayed by persons associated with a dealership, but are using the unregistered watercraft for personal recreation and not demonstrating the watercraft for a potential buyer as required by rule. In addition, persons renting, leasing or offering a watercraft for compensation that is not registered as a livery craft are avoiding the regulatory requirements necessary to ensure public safety. These acts circumvent paying the proper registration fee, facilitate the unlawful use of an unregistered watercraft on the waterways of the state and endanger the public. Currently the Department does not have any recourse when the dealer or personal-use certificates of number are being used contrary to rule. As a result of this finding, the Department proposes to amend the rule to allow invalidation of the dealer watercraft registration when the dealer registration is used fraudulently or contrary to existing rule or the watercraft registration is for personal use and not registered as a livery craft.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated when the rule was last adopted. The rule was amended to correct statutory references and reflect amendments made to U.S. Coast Guard regulations regarding the state of principal operation. The Commission anticipated the proposed amendments would have little or no impact on the Department or regulated community because the proposed amendments only target fraudulent or unauthorized use of watercraft registrations.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the circumstances resulting in the invalidation of a watercraft registration and ensures the registration will remain invalid until the reason for the invalidity is corrected or no longer exists. On an annual basis, the Department invalidates approximately, 1,300 watercraft registrations and decals under this rule. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulation 33 C.F.R. 173 is applicable to the subject of the rule. 33 C.F.R. 173.77 establishes that a certificate of number becomes invalid if the application contains false information or fees for the issuance of the certificate of number are not paid. A certificate of number is also invalid 60 days after the day the watercraft is no longer principally operated in the State where the certificate of number was issued or the person whose name appears on the certificate of number involuntarily loses their interest in the numbered watercraft by legal process. The Department has determined the rule is not more stringent than the corresponding federal law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-506 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Establish a watercraft dealer registration used in violation of A.R.S. § 5-322(F) may result in the invalidation of that watercraft dealer registration.

**R12-4-507. TRANSFER OF OWNERSHIP OF AN ABANDONED OR
UNRELEASED WATERCRAFT**

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(1) and 5-311(A)(5)

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish requirements for transferring ownership of an unreleased or abandoned watercraft. Under R12-4-501, "abandoned watercraft" means any watercraft that has remained: on private property without the consent of the private property owner; unattended for more than 48 hours on a highway, public street, or other public property; unattended for more than 72 hours on state or federal lands; or public waterways unless in a designated moorage or anchorage area. When a watercraft is abandoned on private property, it often falls upon the property owner to take the necessary steps to resolve the issue. Abandoned watercrafts are unsightly and pose potential threats to navigation and the environment through the discharge of oil and other pollutants. The Department needs to dispose of abandoned or derelict boats in the most efficient, expeditious and cost effective manner. Under R12-4-501, "unreleased watercraft" means a watercraft for which there is no written release of interest from the registered owner. This occurs when a person sells a watercraft without proper documentation, such as when a watercraft is sold and the new owner never registers it. The rule was adopted to provide the regulated community with an efficient manner in which to properly dispose of abandoned/unreleased watercraft that includes: determination of abandonment; determination of ownership; a notice of intent to sell/waiver of rights process with an appropriate waiting period, determination of disposition, and transfer of ownership, when warranted. If at any time, the Department finds a person who has a lawful interest in the watercraft, the abandoned watercraft process is stopped.

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written; however the Department is aware of issues involving watercraft abandoned on foreclosed property. Often, a financial institution will contract with a company for the removal of personal effects left on the foreclosed property. Currently, the rule only allows the property owner to submit an abandoned watercraft application. To address this scenario, the Department proposes to amend the rule to allow an agent to act on behalf of the lienholder when a watercraft is abandoned on foreclosed real property.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to reflect current Department processes, comply with statutory requirements, and provide a mechanism that allows a government agency to dispose of junk watercraft. The Commission anticipated government agencies and the Department would benefit from a rulemaking that allows a government agency to dispose of junk watercraft without having to assume ownership. On an annual basis, the Department issues approximately five authorizations to dispose of junk watercraft to government agencies using this new process. The Commission anticipated the regulated community would benefit from a rule that fully communicates the Department's abandoned/unreleased watercraft process.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the requirements that both the Department and the applicant must follow when processing an abandoned or unreleased watercraft application. The Department processes approximately 560 abandoned/unreleased watercraft applications annually. The requirements in place are designed to prevent the transfer of ownership of stolen watercraft or a watercraft that was not truly abandoned and mirror the requirements prescribed under A.R.S. §§ 5-399.01 and 5-399.02. The rule also provides a government official acting within the scope of their duties with a mechanism to dispose of junk watercraft left on state or federal lands or waterways. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

- 12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule complies with A.R.S. § 41-1037. The certificate of number described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-507 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Allow an agent to act on behalf of the lienholder when a watercraft is abandoned on foreclosed real property.

R12-4-508. NEW WATERCRAFT EXCHANGES

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(5), 5-321, and 5-322

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish requirements for issuing a duplicate registration for a new watercraft that is replaced due to a defect by the seller within 30 days of the purchase. The rule was adopted to ensure a person whose watercraft is replaced by the dealership does not pay a second registration fee. On an annual basis, the Department processes approximately two watercraft exchanges.

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to ensure conformity with

Arizona Administrative Procedure Act and the Secretary of State's rulemaking format and style requirements and standards. Because the amendments were nonsubstantive in nature, the Commission anticipated the amendments would have no impact on the Department or regulated community.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes the requirements a watercraft owner must follow when requesting a replacement registration for new watercraft that is replaced by the dealer. The requirements for replacing a registration are significantly less burdensome than those applicable to the registration application process, which is the only other available alternative. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

- 13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule complies with A.R.S. § 41-1037. The authorization described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

No action.

R12-4-509. WATERCRAFT AGENTS

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(5), 5-321, 5-326, and 5-327

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish watercraft agent application requirements and the authorization process for a dealer seeking to issue a 30-day temporary certificate of number upon the sale of a new watercraft. The rule establishes watercraft agent application, inventory, and reporting requirements and the appropriate auditing and tracking mechanisms necessary to ensure compliance with applicable statutory requirements. The rule was adopted to allow a watercraft dealer to issue a 30 day temporary certificate of number immediately upon sale so the customer may enjoy the use of their new watercraft. On an annual basis, the Department authorizes approximately 40 watercraft agents to issue temporary certificates of number, who in turn issue approximately 1,200 temporary certificates of number each year.

- 3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4.

In 2013, A.R.S. § 5-321 was amended to authorize the Commission to establish watercraft registration fees for each motorized watercraft requiring numbering in this state. The Department proposes to amend the rule to reference the rule that establishes the dealer certificate of number fee.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. However, the Department proposes to amend the application requirements to reflect current watercraft registration application requirements and increase consistency between Article 5 rules.

6. Clarity, conciseness, and understandability of the rule.

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. However, the Department proposes to amend the rule to comply with changes made to U.S. Coast Guard regulations under 33 C.F.R. 187 Vessel Identification System (VIS), which prescribes the owner and vessel information requirements for States electing to participate in VIS.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to correct statutory references, ensure compliance with A.R.S. § 5-327, allow a watercraft dealer to submit the required fees electronically, and remove language referencing the repealed watercraft license tax. The Department implemented an electronic funds transfer process by which an authorized watercraft agent can submit statutorily required watercraft registration fees. The Department holds that the benefits of the electronic payment process outweigh any associated costs. The Commission anticipated the amendments would make the rule more concise and less burdensome.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the**

rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes watercraft agent application requirements and the authorization process for dealers seeking to issue a 30-day temporary certificate of number upon the sale of a new watercraft. The rule was adopted to allow a watercraft dealer to issue a 30-day temporary certificate of number immediately upon sale so a customer may enjoy the use of their new watercraft. The rule establishes watercraft agent application, inventory, and reporting requirements and the appropriate auditing and tracking mechanisms necessary to ensure watercraft agents are in compliance with applicable statutory requirements. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule complies with A.R.S. § 41-1037. The authorization described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-509 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Reference the rule that establishes the dealer certificate of number fee.

R12-4-510. REFUND OF FEES PAID IN ERROR

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. § 5-311(A)(5)

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish requirements necessary to obtain a refund watercraft registration renewal fee and Nonresident Boating Safety Infrastructure fee, when applicable, when the watercraft owner erroneously paid those fees twice for the same watercraft or sold the watercraft to another person prior to renewing the registration. The rule was adopted to provide the regulated community with an efficient manner in which to obtain a refund for watercraft registration renewal fees paid in error. On an annual basis, the Department issues approximately 50 refunds under this rule.

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

- 7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

At the January Commission meeting, Karen Brogdon petitioned the Commission for a refund of her watercraft registration fee; Ms Brogdon stated that she had renewed her watercraft registration in error. The current rule allows the Department to process a refund when the person renews a registration for a watercraft they no longer own or pays the watercraft registration fee twice. In this case, the woman accidentally renewed the registration for a watercraft she still owned, but did not want to register. The Commission directed the Department to consider to amend the rule to allow for a refund under these circumstances when pursuing rulemaking.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to increase consistency between rules within Article 5. The Commission anticipated the proposed amendment would have little or no impact on the Department or regulated community.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

Not applicable, the Department did not indicate a course of action for the rule in the previous five-year review report.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the**

rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes requirements necessary to obtain a refund when the watercraft owner erroneously paid those fees twice for the same watercraft or sold the watercraft to another person prior to renewing the registration. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-510 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Enable the Department to process a refund when the person renews a watercraft registration in error.

R12-4-511. PERSONAL FLOTATION DEVICES

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(5), 5-331, and 5-350(A)

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish personal flotation device (PFD) category and type requirements specific to the operator, each passenger, and watercraft type. The rule was adopted to establish PFD category and type requirements in compliance with A.R.S. § 5-331 and U.S. Coast Guard regulations as required under A.R.S. § 5-311.

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

In 2014, 33 C.F.R. 175 was amended to define "wearable" and "throwable" PFDs. A throwable PFD means a U.S. Coast Guard approved Type IV device for use on any watercraft such as, but not limited to, a buoyant cushion, ring buoy, or horseshoe buoy. A wearable PFD means a U.S. Coast Guard approved Type I, Type II, Type III, or Type V device for use on any watercraft such as, but not limited to, an off-shore lifejacket, near-shore buoyant vest, special-use wearable device, or flotation aid. The Department proposes to amend the rule to reflect changes made to U.S. Coast Guard regulation as required under A.R.S. § 5-311.

In 2008, the U.S. Coast Guard issued a memorandum in response to an inquiry from the Director of the Oregon Marine Board asking whether or not a paddleboard is considered to be a "vessel" for purposes of navigation, accident reporting, safety equipment (i.e. PFDs), and carriage requirements. The memorandum states the U.S. Coast Guard's legal determination is, "when beyond the narrow limits of a swimming, surfing, or bathing area, the device known as a "paddleboard" is a vessel under 46 C.F.R. § 2101 and is subject to U.S. Coast Guard regulations, unless specifically exempted." While the rule does not specify a person operating a paddleboard is required to wear a PFD, members of the public are still required to comply with U.S. Coast Guard regulations.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation. Compliance with PFD laws and rules is important because, according to the U.S. Coast Guard, drowning was the reported cause of death in 78% of the 610 recreational boating fatalities in 2014 nationwide. Of those incidents, 84% of those who drowned were not wearing a PFD.

6. Clarity, conciseness, and understandability of the rule.

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. However, the Department proposes to remove redundant language to make the rule more concise.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to ensure conformity with Arizona Administrative Procedure Act and the Secretary of State's rulemaking format and style requirements and standards. Because the amendments were nonsubstantive in nature, the Commission anticipated the proposed amendments would have no impact on the Department or regulated community.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes PFD category and type requirements specific to the operator, each passenger, and watercraft type as required under A.R.S. §§ 5-331 and 5-311. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

- 12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal regulation 33 C.F.R. 175 is applicable to the subject of the rule. 33 C.F.R. 175 establishes federal PFD regulations apply to all recreational vessels propelled or controlled by machinery, sails, oars, paddles, poles, or other vessels, to include defining "personal flotation device" and "PFD" prescribing the circumstances under which a PFD is required, specifications for size, fit, access, and serviceable condition. 33 C.F.R. 175.13(c)

states, "No person may operate a recreational vessel under way with any child under 13 years old aboard unless each such child is either wearing an appropriate PFD approved by the U.S. Coast Guard or is below decks or in an enclosed cabin." The Department has determined the rule is more stringent than the corresponding federal law in requiring a child who is on board a watercraft and is twelve years of age or under to wear a PFD whenever the watercraft is underway. However, A.R.S. § 5-331 (C) provides statutory authority to exceed the requirements of federal law and states, "A child twelve years of age or under on board a watercraft shall wear a United States coast guard approved type I, II or III personal flotation device whenever the watercraft is underway."

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-511 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Reflect changes made to U.S. Coast Guard regulation as required under A.R.S. § 5-311.

R12-4-512. FIRE EXTINGUISHERS REQUIRED FOR WATERCRAFT

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(2), 5-311(A)(5), and 5-332

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish fire extinguisher requirements specific to the type or class of watercraft. A.R.S. § 5-332 requires all watercraft fueled with volatile liquid to have aboard a U.S. Coast Guard-approved fire extinguisher that is available for immediate use, unless exempt. In addition, watercraft over twenty-six feet

in length shall have aboard such fire extinguishers as may be prescribed or approved by the regulations of the U.S. Coast Guard. This rule was adopted to prescribe requirements and exemptions for the possession of fire extinguishers to ensure compliance with U.S. Coast Guard regulations, with safety as the first concern.

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 46 C.F.R. Part 25, which is relevant to these rules because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. The only concern is the phrase "readily accessible and available for immediate use." Though this term is malleable and gives greater discretion to law enforcement officers to determine whether or not a person is in compliance with the law, it might not generally be understood by the public and persons may exploit the fact that the phrase is not definitive to avoid their responsibility for ensuring their watercraft is properly equipped with the required safety equipment. For this reason, the Department does not feel that it is advisable, or perhaps even possible, to further clarify the adjectival phrase "readily accessible and available for immediate use." It is recommended the Information,

Education, and Recreation Branch continue to conduct outreach activities designed to encourage watercraft owners to become familiar with watercraft laws and registration requirements, take a boating education class, and exercise safe boating practices.

- 7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to clarify fire extinguisher access and use requirements prescribed under A.R.S. § 5-332. The Commission anticipated the proposed amendments would have little or no impact on the Department or regulated community.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes fire extinguisher requirements specific to the type or class of watercraft. A.R.S. § 5-332 requires all watercraft fueled with volatile liquid shall have aboard a U.S. Coast Guard-approved fire extinguisher that is available for immediate use, unless exempt. In addition, watercraft over twenty-six feet in length shall have aboard such fire extinguishers as may be prescribed or approved by the regulations of the U.S. Coast Guard. The rule was adopted to prescribe requirements and exemptions for the possession of fire extinguishers to ensure compliance with state statute and regulations of the U.S. Coast Guard, with safety as the first concern. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulation 46 C.F.R. Part 25 is applicable to the subject of the rule. 46 C.F.R. Part 25 prescribes fire extinguisher classifications, the number and type of fire extinguishers required for specific vessels, locations for storage, inspection, and condition requirements. The Department has determined the rule is not more stringent than the corresponding federal law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No action.

R12-4-513. WATERCRAFT ACCIDENT AND CASUALTY REPORTS

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(5), 5-311(A)(7), and 5-349

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish self-reporting requirements for watercraft operators involved in any collision, accident, or other casualty resulting in an injury, casualty, or property damage. The rule was adopted to ensure compliance with U.S. Coast Guard accident and casualty reporting requirements. On an annual basis, the Department submits 105 watercraft accident and casualty reports to the U.S. Coast Guard.

- 3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

- 5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. However, the Department proposes to amend the rule to replace references to "accident" with "incident" to reflect terminology used by the industry.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to replace form specific requirements with general requirements, such as "Operator's personal information" instead of "Operator's name, address, date of birth, gender, and telephone number," clarify when and where the report should be submitted, and to remove duplicative language. The Commission anticipated the proposed amendments would have little or no impact on the Department or regulated community.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The objective of the rule is to establish self-reporting requirements for watercraft operators involved in any collision, accident, or other casualty resulting in an injury, casualty, or property damage. The rule was adopted to ensure compliance with U.S. Coast Guard accident and casualty reporting requirements. The form is furnished by the Department and is given to the persons involved by the officer who initially responded to the incident. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulation 33 C.F.R. 173 is applicable to the subject of the rule. 33 C.F.R. 173.55 establishes the operator of a vessel shall submit the casualty or accident report prescribed in § 173.57 to the reporting authority prescribed in § 173.59 when, as a result of an occurrence that involves the vessel or its equipment damage to vessels and other property totals \$2,000 or ...". The Department has determined the rule is more stringent than the corresponding federal law. However, A.R.S. § 5-349(C) provides statutory authority to exceed the requirements of federal law and states, "For every other collision, accident or other casualty involving property damage exceeding five hundred dollars, a report shall be submitted within five days after the incident by the operator or owner of the watercraft involved."

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-513 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Replace references to "accident" with "incident" to reflect terminology used by the industry.

R12-4-514. LIVERIES

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(5) and 5-371

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of this rule is to establish identification requirements for rental watercraft when the certificate of number is retained on shore by the owner. The rule was adopted to ensure compliance with A.R.S. §§ 5-321(F), 5-371 and 33 C.F.R. 173 certificate of number requirements.

- 3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above, although the objective is limited in scope as it is incumbent on the person operating livery to voluntarily register as a livery. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern, etc. Responses indicate the rule is understandable and applicable, but lacks consequence and currently only applies to those livery operations that voluntarily register as a business conducting watercraft for hire operations. In addition, the Department has not received any written comments in regards to this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations. U.S. Coast Guard regulations address commercial, passenger for hire operations in which a livery offers a watercraft with an operator for hire or lease operations. The Department proposes to amend the rule to address renting or leasing operations that do not include an operator.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written; however, the Department is aware of persons who offer to rent or lease personal watercraft that are registered for personal use without providing the documentation and equipment required under A.R.S. § 5-371. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received; however, verbal communications have been provided by law enforcement agencies encountering rented, personally owned, watercraft.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the

rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to ensure conformity with Arizona Administrative Procedure Act and the Secretary of State's rulemaking format and style requirements and standards. Because the amendments were nonsubstantive in nature, the Commission anticipated the amendments would have no impact on the Department or regulated community.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

The Department did not complete the course of action indicated in the previous five-year review report for R12-4-514 which indicated the rule would be amended to reference the aquatic invasive species program authorized under Laws 2009, First Regular Session, Chapter 77. Further analysis determined the amendment was unnecessary as livery operators are subject to the aquatic invasive species rules which became effective January 10, 2012. Under R12-4-1101, "Owner" means a person who claims lawful possession of a watercraft, vehicle, conveyance, or equipment.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes identification requirements for rental watercraft when the certificate of number is retained on shore by the owner. The rule ensures compliance with A.R.S. §§ 5-321(F), 5-371 and 33 C.F.R. 173 certificate of number requirements. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule, while maintaining compliance with U.S. Coast Guard regulations and ensuring watercraft are properly registered and equipped.

- 12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal regulation 33 C.F.R. 173 is applicable to the subject of the rule. 33 C.F.R. 173.21 establishes that no person may use a vessel subject to numbering requirements unless it has a number issued on a certificate of number by the issuing authority in the State of principal operation and the number is displayed on the vessel or, if leased or rented for noncommercial operation, a copy of the lease or rental agreement containing the vessel number that appears on the certificate of number and the period of time for which the vessel is leased or rented. The Department has determined the rule is not more stringent than the corresponding federal law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-514 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Address rental or leasing operations that do not include an operator.

R12-4-515. DISPLAY OF AZ NUMBERS AND REGISTRATION DECALS

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 311(A)(5), 5-321(A), 5-322, 5-326, and 5-327

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish requirements for the display of watercraft numbers and registration decals issued by the Department. A.R.S. § 5-321(E) requires the Department issue a watercraft registration applicant "two current annual decals and a certificate of number stating the number issued to the watercraft and the name and address of the owner. The owner shall display the assigned number and the current annual decals

in such a manner as may be prescribed by rules of the Commission." The Department-issued numbers and decals are the means of identifying a watercraft and its registration status. The rule was adopted to ensure compliance with 33 C.F.R. 174 State numbering systems requirements.

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations. However, the Department proposes to correct a citation error in subsection (A), A.R.S. § 3-322 should be A.R.S. § 5-322.

A.R.S. § 5-322(A) requires all motorized watercraft whether underway, moored or anchored on the waters within the boundaries of the state to be numbered in accordance with A.R.S. Title 5, Chapter 3 or rules of the Commission in accordance with the federally approved numbering system. The Department proposes to amend the rule to reference the "moored or anchored" to increase consistency between statute and rule.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

- 7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to correct statutory references, clarify the rule, and ensure consistency between rules within Article 5. The Commission anticipated the proposed amendments would have little or no impact on the Department or regulated community.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012

- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The objective of the rule is to establish requirements for the display of watercraft numbers and registration decals issued by the Department. A.R.S. § 5-321(E) requires the Department issue a watercraft registration applicant "two current annual decals and a certificate of number stating the number issued to the watercraft and the name and address of the owner." The rule establishes AZ number and registration decal display requirements sufficient to ensure law enforcement can easily view the information and determine whether a watercraft is lawfully registered. The information required is sufficient to identify the watercraft and state of registration. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulation 33 C.F.R. 173 and 33 C.F.R. 174 are applicable to the subject of the rule. 33 C.F.R. 173 prescribes requirements for numbering vessels and 33 C.F.R. 174 prescribes a standard numbering system for vessels. The Department has determined the rule is not more stringent than the corresponding federal law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-515 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Reference "moored or anchored" to increase consistency between statute and rule.

R12-4-516. WATERCRAFT SOUND LEVEL RESTRICTION

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(2), 5-311(A)(3), 5-311(A)(5), and 5-336

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The rule establishes sound level restrictions and testing requirements with the intent of protecting human health and minimizing the annoyance of noise to the general public, in compliance with the authority given to each state under the Noise Control Act of 1972 and Quiet Communities Act of 1978. The rule was adopted to ensure compliance with A.R.S. § 5-336, which is intended to prevent excessive or unusual noise.

- 3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4, and 42 U.S.C. 65, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

- 5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can

check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to comply with requirements prescribed under A.R.S. § 41-1028(D) and demonstrate the Department's compliance with federal copyright laws. The Commission anticipated the proposed amendments would have little or no impact on the Department or regulated community.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes sound level restrictions and testing requirements with the intent of protecting human health and minimizing the annoyance of noise to the general public, in compliance with the authority given to each state under the Noise Control Act of 1972 and Quiet Communities Act of 1978, which states federal action is essential to deal with major noise sources in commerce control of which require national uniformity of treatment and strives to promote the development of effective state and local noise control programs. The sound level restrictions and testing requirements are either the same as or slightly more restrictive than those in place in other Western states. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulation 42 U.S.C. 65 is applicable to the subject of the rule. 42 U.S.C. 65 establishes federal action is essential to deal with major noise sources in commerce control of which require national uniformity of treatment. The Department has determined the rule is not more stringent than the corresponding federal law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. **Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

No action

R12-4-517. WATERCRAFT MOTOR AND ENGINE RESTRICTIONS

1. **General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(2) and 5-311(A)(3)

2. **Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish watercraft motor and engine restrictions for waters located in this State to protect the public and conserve aquatic resources. The rule was adopted to restrict the use of watercraft and boat engines on certain bodies of water in order to protect the public and the environment. Powerboats can have a deleterious impact on certain lakes because their wake and resultant wave action can erode fragile shorelines; gasoline powered motors produce petroleum by-product emissions that can pollute the water; propellers can stir up sediment containing chemical properties that can kill aquatic wildlife; noise pollution can disturb the public and wildlife. In addition, some lakes are simply too small to safely operate a powerboat and others have nesting waterfowl populations or other wildlife habitat that must be considered.

3. **Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. **Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

On August 13, 2013, the Department received a petition requesting that subsection (B) of the rule be amended to remove the 10 horsepower (hp) limitation on electric and gas powered motors and implement a "no wake" restriction instead. The petition was placed on the December 6, 2013 Commission agenda. The petitioner was present and addressed the Commission in support of his petition. The Commission asked the petitioner if he would be willing to withdraw his petition, so that the Commission did not have to deny it, but rather could vote to direct the Department to add the petitioner's request to the regular rulemaking cycle for evaluation and consideration. The petitioner agreed to withdraw his petition and stated that he hopes to see his proposed amendment incorporated into the rule.

The Apperson Petition requested a change that, if implemented, would have multiple access and cross-program implications. Consequently, Law Enforcement and Fisheries Program staff were tasked with evaluating the requested amendments. After careful consideration and analysis, the Department recommends not amending the rule to remove the 10 hp limitation on electric and gas powered motors and implement a "no wake" restriction

based on the following observations:

- The lakes listed under this subsection are all considered to be angling lakes. If the rule were amended as suggested, in theory, these lakes would see a notable increase in day-cruising by watercraft with larger motors.
- A clear-cut hp rating is more practical for law enforcement officers to enforce than the more subjective wakeless speed.
- A wakeless speed restriction would make some of the larger lakes less safe because it would prevent boaters from being able to rapidly return to a boat ramp in the case of inclement weather, lightning, high winds, etc.
- A wakeless speed restriction will result in a sweeping change to all 29 lakes and will impact all lake users including boat fisherman, land management agencies, and marina operators. Addressing uncontrolled wakes is more readily tackled by enforcing the provisions of A.R.S. § 5-343. Currently, the Department and 15 other jurisdictions practice enforcement efforts that directly address the small number of offending boat operators, without enacting a sweeping change that will impact all boaters and marina operators.
- Noise issues on small mountain waterways are a valid concern for all persons who recreate at these lakes, however, the Department believes the current noise levels associated with the 10 hp motors are acceptable.
- While some of the newer 4-stroke outboard motors may make less noise than a 10hp motor, removing hp restriction would not limit the use of these lakes to watercraft with a newer motor, which means a person could lawfully idle a 400 hp jet boat across these lakes.
- Larger horsepower engines do not run efficiently at idol speeds, which may result in excess exhaust emissions into the water and air at the 29 affected lakes.
- Bald eagles are known to nest around some of the small lakes. The Department addresses the potential noise impacts to nesting eagles by implementing small area closures. Allowing larger motors on the lakes would likely result in large area closures around these nests, thus increasing the impact on boaters and anglers during bald eagle nesting seasons.
- Many of these lakes are shallow and the launch ramps are not designed to accommodate the sizes, weights, and launching drafts necessary for the safe launching of larger boats. The requested amendments would allow persons with larger, heavier watercraft to potentially exceed the designed weight limit for dirt and gravel launch ramps, which is likely to damage these access structures. This would result in added costs to the agency responsible for maintaining the lake and possibly increase the number of general liability claims.
- Law enforcements officers are given the discretion to manage instances where a trolling battery fails or watercraft with gasoline motors need trailering.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated when the rule was last adopted. The rule was amended to allow a person to operate non-motorized watercraft, such as a canoe, inflatable raft, or kayak provided the person also possesses a valid use permit issued by the U.S. Forest Service. The amended rule does not exempt a person from complying with all applicable requirements imposed by federal or state laws, rules, regulations, or orders. The Commission anticipated the proposed amendment would promote the safe and proper use of watercraft by Arizona youth, which should contribute to increased participation in outdoor recreational activities by these youth and their families.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

The Department did not complete the course of action indicated in the previous five-year review report for R12-4-517 which indicated the Cibola Lake would be added to the list of waters that allow the use of watercraft powered by an electric motor, only. Upon further analysis, the Department determined the lake should remain in its current unrestricted status.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule was established to prescribe watercraft motor and engine restrictions for waters located in this State in an effort to protect the public and conserve aquatic resources. The rule was adopted to restrict the use of watercraft and boat engines on certain bodies of water in order to protect the public and the environment. Powerboats can have a deleterious impact on certain lakes because their wake and resultant wave action can erode fragile shorelines; gasoline powered motors produce petroleum by-product emissions that can pollute the water; propellers can stir up sediment containing chemical properties that can kill aquatic wildlife; noise pollution can disturb the public and wildlife. In addition, some lakes are simply too small to safely operate a powerboat and others have nesting waterfowl populations or other wildlife habitat that require consideration. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

- 12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

- 13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

No action.

R12-4-518. REGATTAS

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(5), 5-321(A)(2), 5-332(C), and 5-322(F)

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to prescribe regulations for the issuance of permits for motor boat races, regattas, or other events, as authorized under A.R.S. § 5-311(A)(6). The Commission has chosen not to exercise its authority under the statute and does not issue permits for such events outside of the Colorado River. Therefore, these events may be held without obtaining a permit from the Department. The U.S. Coast Guard, however, does require and issue permits for events held on the Colorado River. The purpose of this rule is to ensure the Department's has the ability to enforce the requirements of the U.S. Coast Guard permits.

- 3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review,

Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to reference the aquatic invasive species program under Article 11. The Commission believes the unrestricted spread of quagga and zebra mussels would have far-reaching financial impacts that can affect virtually every resident of the state. The Commission anticipated the amendments would have little or no financial effect on most watercraft owners and operators, but costs could range from no cost by simply pulling the drain plug and allowing the watercraft to dry to \$2,000 when decontaminating a watercraft that was moored over a lengthy period of time in an infested waterbody.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 17 A.A.R. 1160, June 10, 2011
- Notice of Proposed Rulemaking: 17 A.A.R. 1154, June 10, 2011
- Public Comment Period: June 10, 2011 through July 10, 2011
- G.R.R.C. approved the Notice of Final Rulemaking at the January 10, 2012 Council Meeting
- Notice of Final Rulemaking: 18 A.A.R. 194, January 27, 2012

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule prescribes requirements for regattas, as authorized under A.R.S. § 5-311(A)(6). The Commission chose not to exercise its authority under the statute and does not issue permits for such events outside of the Colorado

River. Therefore, these events may be held without obtaining a permit from the Department. The U.S. Coast Guard, however, does require and issue permits for events held on the Colorado River. The purpose of this rule is to ensure the Department's has the ability to enforce the requirements of the U.S. Coast Guard permits. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

- 12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

- 13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

No action.

R12-4-519. RECIPROCITY

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(5), 5-321(A)(2), 5-322(C), and 5-322(F)

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the period of time during which a registration issued by another jurisdiction is valid for operating a watercraft after Arizona becomes the new state of principal use. The rule was adopted to implement the authority prescribed under A.R.S. § 5-322(C), which states, "All owners of motorized watercraft when in the course of interstate operation displaying a current and valid number issued under an approved federal numbering system of the United States coast guard, a state, the Commonwealth of

Puerto Rico, the Virgin Islands, Guam or the District of Columbia shall register such watercraft with the department before the expiration of the reciprocity period prescribed by rules of the commission."

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.

The rule is effective in achieving its objective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to these rules because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to comply with U.S. Coast Guard regulations, which were amended to reference "state of principal operation" instead of "state of principal use." The Commission anticipated the proposed amendments would have little or no impact on the Department or regulated community.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the period of time during which a registration issued by another jurisdiction is valid for operating a watercraft after Arizona becomes the new state of principal use. The rule was adopted to implement the authority prescribed under A.R.S. § 5-322(E). The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulation 33 C.F.R. 173 is applicable to the subject of the rule. 33 C.F.R. 173 establishes a vessel numbered in a State is deemed in compliance with the numbering system when operated temporarily in another state; and a person moving to another state may operate their vessel with the other state's number for up to sixty days in the new state. The Department has determined the rule is not more stringent than the corresponding federal law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

No action.

R12-4-520. ARIZONA UNIFORM STATE WATERWAY MARKING SYSTEM

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(4), 5-311(A)(5), 5-311(A)(7), and 5-361

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to incorporate the U.S. Coast Guard's uniform state waterway marking system. The rule was adopted to comply with A.R.S. § 5-361, which requires the Commission to adopt rules for uniform

navigational marking standards of waters. This system is intended for use on lakes and inland waterways that aren't covered by nautical charts. These aids also assist watercraft operators in making a safe landfall, mark isolated dangers, enable pilots to follow channels, and provide a continuous chain of charted marks for precise piloting in Arizona waters. They provide valuable information regarding water depths, hazards, and other features that are not available in an atlas or road map.

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation. However, the Commission proposes to amend the rule to incorporate by reference the most recent version of 33 C.F.R. 62 to ensure compliance with A.R.S. § 5-361.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

- 7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to ensure conformity with Arizona Administrative Procedure Act and the Secretary of State's rulemaking format and style requirements and standards. Because the amendments were nonsubstantive in nature, the Commission anticipated the amendments would have no impact on the Department or regulated community.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012

- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes uniform state waterway marking system in compliance with U.S. Coast Guard regulations. This system assists watercraft operators by providing valuable information regarding water depths, hazards, and other features that are not available in an atlas or road map and are subject to change due to environmental conditions. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulation 33 C.F.R. 62 is applicable to the subject of the rule. 33 C.F.R. 62 prescribes the general characteristics of the U.S. Aids to Navigation System, and the details, policies and procedures employed by the U.S. Coast Guard in establishing, maintaining, operating, changing or discontinuing Federal aids to navigation. The Department has determined the rule is not more stringent than the corresponding federal law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-520 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Incorporate by reference the most recent version of 33 C.F.R. 62 to ensure compliance with A.R.S. § 5-361.

**R12-4-521. PLACING OR TAMPERING WITH REGULATORY MARKERS
OR AIDS TO NAVIGATION**

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(4), 5-311(A)(5), 5-311(A)(7), and 5-361

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish prohibited activities involving regulatory markers, aids to navigation, or other waterway marking devices. Under A.R.S. § 5-361(A), "No city, county or person shall mark the waters of this state in any manner in conflict with the uniform navigational marking standards of waters as prescribed by the commission or the United States coast guard." The rule was adopted to clearly establish the types of unlawful actions that would result in a violation of statute.

- 3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules, except as noted below. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

Federal regulation 33 C.F.R. 62 also addresses the use of lights. Amending the rule to include lights allows the Department to address instances where lights are placed along a waterway. For example, a green light placed on a dock gives the impression that a watercraft is being operated in that area. This presents a safety hazard to persons operating another watercraft in the vicinity. The amendment would allow the Department to ask the person responsible for the light to relocate or change the color of the light.

- 5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.**

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

- 6. Clarity, conciseness, and understandability of the rule.**

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

- 7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to ensure conformity with Arizona Administrative Procedure Act and the Secretary of State's rulemaking format and style requirements and standards. Because the amendments were nonsubstantive in nature, the Commission anticipated the amendments would have no impact on the Department or regulated community.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes the types of unlawful actions that would result in a violation of A.R.S. § 5-361(A). The rule prohibits the unauthorized placement or interference with regulatory markers or aids to navigation and is necessary to ensure public health and safety. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal regulation 33 C.F.R. 62 is applicable to the subject of the rule. 33 C.F.R. 62 prescribes the general characteristics of the U.S. Aids to Navigation System, and the details, policies and procedures employed by the U.S. Coast Guard in establishing, maintaining, operating, changing or discontinuing Federal aids to navigation. The Department has determined the rule is not more stringent than the corresponding federal law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-521 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

Regulate the use of lights to mirror regulations under 33 C.F.R. 62.

R12-4-522. ESTABLISHMENT OF CONTROLLED-USE MARKERS

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(4), 5-311(A)(5), 5-311(A)(7), and 5-361

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish requirements for persons requesting to establish, change, or remove controlled-use markers and the follow-up reporting requirements. The rule was adopted to establish a consistent process by which any person or government agency may request the establishment, change, or removal of controlled-use markers on waters under the jurisdiction of the Commission or on waters not under the jurisdiction of another agency. The Department places controlled-use markers only where controlled operation of watercraft is necessary to protect life, property, or habitat, and moves or removes the markers only when the need for the protection changes. On an annual basis, the Department receives approximately one report stating an agency has placed, moved, or removed a controlled-use marker.

- 3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any

written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule.

6. Clarity, conciseness, and understandability of the rule.

Overall, the rule is clear, concise, and understandable and is logically organized and generally written in the active voice to be understood by the general public. However, internal discussions indicated the rule could be amended to be more accurate. The Department proposes to amend the rule to increase clarity.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to specify the information

required in the written report submitted by an agency placing or removing controlled use markers on waterways in this state to clarify the rule and ensure the appropriate information is contained in the initial report. The Commission anticipated the proposed amendments would have little or no impact on the Department or regulated community.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes requirements for persons requesting to establish, change, or remove controlled-use markers and follow-up reporting requirements. The Department places controlled-use markers only where controlled operation of watercraft is necessary to protect life, property, or habitat, and moves or removes those markers only if the need for the protection changes. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

- 12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal regulation 33 C.F.R. 62 is applicable to the subject of the rule. 33 C.F.R. 62 prescribes the general characteristics of the U.S. Aids to Navigation System, and the details, policies and procedures employed by the U.S. Coast Guard in establishing, maintaining, operating, changing or discontinuing Federal aids to navigation. The Department has determined the rule is not more stringent than the corresponding federal law.

- 13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule complies with A.R.S. § 41-1037. The authorization described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-522 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Increase clarity to make the rule more concise.

R12-4-523. CONTROLLED OPERATION OF WATERCRAFT

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(4), 5-311(A)(5), and 5-361

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The rule establishes watercraft operational restrictions for waterways restricted by lawfully placed controlled-use markers and the exceptions under which law enforcement or persons engaged in a rescue operation or participating in a regatta may operate their watercraft in a manner contrary to lawfully imposed restrictions.

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to ensure conformity with Arizona Administrative Procedure Act and the Secretary of State's rulemaking format and style requirements and standards. Because the amendments were nonsubstantive in nature, the Commission anticipated the amendments would have no impact on the Department or regulated community.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes exceptions under which law enforcement or persons engaged in a rescue operation or participating in a regatta may operate their watercraft in a manner contrary to lawfully imposed restrictions. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

- 12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

- 13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

No action.

R12-4-524. WATER SKIING

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(5), 5-311(A)(7), and 5-346

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The rule establishes water ski observer requirements. The responsibilities of an observer include watching for hazards, observing water skiers, notifying boat operators when a skier has entered the water, and being able to determine approximate points of entry in the water. An observer must be able to perform all of these tasks without direct supervision. The rule language mirrors observer requirements in place in adjoining states, California and Nevada, which helps to reduce regulatory inconsistencies that could result in enforcement issues on shared waterways.

- 3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting**

the conclusion reached.

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

The Department proposes to amend the rule to ban "teak surfing". In recent years this risky new fad, also called "drag surfing" has emerged in boat-towed sports. Teak surfing is performed by hanging on the swim platform (often made of teak wood) at the back of a boat while the boat is moving forward in slow motion. Often the teak surfer will release his grip and body surf the boat's wake. An obvious danger is the teak surfer's proximity to the boat propeller. The silent danger is exposure to carbon monoxide, which is tasteless and odorless, and potentially lethal when inhaled. To add to the problem, teak surfers rarely wear life preservers because they inhibit body surfing a wake. According to the Naval Safety Center, "The symptoms of carbon monoxide poisoning may include severe headache, dizziness, confusion, nausea, fainting, and death. Low levels can cause shortness of breath, mild nausea, and a mild headache. Low levels are more dangerous in the boating environment because they can lead to drowning. Carbon-monoxide poisoning may not be suspected immediately because the symptoms are similar to those of people with the flu, food poisoning, or other illnesses." The Department proposes to amend the rule to prohibit this dangerous practice.

The Department further proposes to require observers for all persons who are being towed behind a watercraft or riding a watercraft's wake. In this variation of waterskiing, surfers are pulled behind a watercraft by a towrope. Once a surf wave is created, the wake surfer releases the rope and rides the wave created by the

watercraft. Wake surfers are exposed to the same risks as water skiers and should be subject to the same safety requirements. The Department further proposes to amend the rule to require a wake surfer to wear a PFD.

6. Clarity, conciseness, and understandability of the rule.

Overall, the rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. However, the Department proposes to amend the rule to require the operator of a watercraft to ensure an observer on duty at all times a person is being towed behind the watercraft or is surfing a wake created by the watercraft. Additionally the sport of towed watersports has grown immensely and includes a wide range of devices that are being used. The proposed amendments attempt to include as many of those devices that are known at this time to improve clarity to the public and minimizes misunderstanding of devices regulated by rule.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on December 4, 2007. The rule was amended to add a new Section requiring a person to be physically capable and mentally competent to properly display a ski flag. The Commission anticipated the proposed rulemaking would benefit water skiers by having an observer who is able to display a ski flag in a timely and consistent manner, thus increasing the water skier's safety. The Commission anticipated other water users would benefit by knowing that a well-displayed ski flag means that there is a skier or a towrope in the water, which will reduce the chance of an accident.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not applicable, the Department did not indicate a course of action for the rule in the previous five-year review report.

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes water ski observer requirements and places the responsibility on the operator to ensure all persons being towed behind a watercraft are wearing a personal flotation device and are being towed in a manner to minimize carbon-monoxide exposure. The responsibilities of an observer include watching for hazards, observing water skiers, notifying boat operators when a skier has entered the water, and being able to determine approximate points of entry in the water. An observer must be able to perform all of these tasks without direct supervision. The rule language mirrors observer requirements in place in adjoining states, California and Nevada, which helps to reduce regulatory inconsistencies that could result in enforcement issues. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-524 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Require the operator of a watercraft to ensure an observer is on duty at all times a person is being towed behind the watercraft or is surfing a wake created by the watercraft.
- Prohibit persons from "teak surfing" (activity where a person hangs on a swim platform at the back of a watercraft while the boat is moving forward in slow motion).
- Require a person who is wake surfing behind a watercraft to wear a PFD.

R12-4-525. REVOCATION OF WATERCRAFT CERTIFICATE OF NUMBER, AZ NUMBERS, AND DECALS

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(5), 5-391(I), 41-1092, 410-1092.02, 41-1092.04, 41-1092.06, and 41-1092.11

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish the revocation process for certificates of number and decals issued by the Department. The rule was adopted after a 2001 Sunset Audit indicated the Department should adopt a rule to establish the revocation authorized under A.R.S. § 5-391(I). Since the rule was adopted, the Department has not revoked any watercraft certificate of numbers, numbers, or decals under this rule.

- 3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

- 4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.**

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona. Officers may issue a warning order or a citation and order the operator ashore to correct the violation.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to revise the rule heading; include the Nonresident Boating Safety Infrastructure decal; extend the time in which a person has to request a hearing; and specify the items being revoked by the Department. The Commission anticipated the proposed rulemaking would have little or no impact on the regulated community.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes the revocation process for certificates of number and decals issued by the Department. The rule was adopted after a 2001 Sunset Audit indicated the Department should adopt a rule to establish the revocation authorized under A.R.S. § 5-391(I). The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

- 12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

- 13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

No action.

R12-4-526. UNLAWFUL MOORING

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. § 5-311(A)(5)

- 2. Objective of the rule, including the purpose for the existence of the rule.**

The objective of the rule is to establish watercraft mooring restrictions, prohibitions, and exceptions. The rule was adopted to maintain waters for public use and reduce public nuisance, pollution caused by persons who moor watercraft for extended periods of time and/or unlawfully abandon watercraft.

- 3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.**

The rule is not effective in achieving the objective stated above. Internal comments and comments from other law enforcement agencies indicate other enforcement issues exist. The Department is aware of issues resulting from unlawful mooring. Lake Havasu's Site 6 is a protected, horseshoe-shaped inlet on the north shore of an inhabited island at Lake Havasu and is within the city limits of Lake Havasu City and is connected to the mainland by the London Bridge. Site 6 provides boaters with the only "free" public launch ramp in Lake Havasu City. The center of the land mass is a very convenient parking lot with the southern arm providing free boat launching access with day use slips and a fishing pier. The northern arm is a long inlet with no launching facility.

Because Site 6 is the only free boat launch facility on Lake Havasu, there is heavy watercraft traffic that is encumbered by unattended watercraft that are moored for long periods of time and interferes with boating access. In some cases, persons resort to living on a boat (squatting), but do not properly maintain it so problems arise relating to public safety and water pollution.

Watercraft that are in poor condition or sometimes incapable of navigation are used as "party" platforms where persons use them as overnight floating "crash pads" or docking stations where multiple boats tie off and congregate. Most beaches along Lake Havasu are restricted to day-use only and over-night camping is prohibited, unless otherwise permitted by BLM, or State Parks in designated areas. Mooring a dilapidated watercraft offshore circumvents the day-use and camping restrictions. The rule was adopted to address these long-term mooring issues occurring at Site 6 and other areas along Lake Havasu, particularly around the island.

Both Department officers and Lake Havasu Police Department have requested the rule be amended to enable law enforcement to take action quickly when a watercraft is abandoned or is submerged or sinking as these situations result in a watercraft that is leaking fuel or excrement into the public waterways. The Department proposes to amend the rule to require a person to remove abandoned or submerged watercraft within 72 hours of written or verbal notification and establish the owner of the watercraft is responsible for all towing and storage fees resulting from the removal of the watercraft from waters.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public. However, the conflicts between the rule and other jurisdictional regulations result in some public confusion. The Department believes that once the proposed

amendments listed above are adopted the jurisdictional regulations will be similar, resulting in a rule that is more concise.

7. **Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

The following comment was submitted in response to the Notice of Proposed Rulemaking, 18 A.A.R. 2437, October 5, 2012:

Written Comment: October 15, 2012. It simply amazes me when AZGFD makes rules, but doesn't abide by them. Maybe it's because AZGFD is a government entity instead of a private company. I don't want to hear that money is tight. Here in Lake Havasu City, no one goes by your rules, boats are abandoned, boats are sinking along the lake and left unattended - check the sinking boats at Site 6, docks are installed on the lake that are not authorized. A makeshift pontoon boat has been left in the reeds for two years south of Mesquite. People fill their jet skis up with gasoline cans on the water and spill gas over the jet ski into the water. I watched one person at Site 6 load 16 people (six were children) on an 18 foot pontoon boat and no one had a life jacket on. AZGFD spent time and money one weekend at Site 6; why not the rest of the weekends? Why not during the week? Check the boats leaving the ramps at Site 6, Windsor north and south for navigation light when leaving at dark. Now that the snowbirds are here, check them for safety equipment on their boats, check them for fishing permits, some don't buy them. Why, "because no one has checked me for years. So why buy a fishing license?" Check the fish cleaning stations at Site 6, Cat Tail, and Windsor; a man and wife, snowbirds from Oregon, were cleaning 24 stripers; I informed them that the limit was 10 stripers each and was told, "There is no one here to check us, so we'll do what we want."

Agency Response: All state and local law enforcement agencies may enforce laws on federal and state navigational waterways; however, law enforcement agencies set their own directives in an effort to better manage their own resources as needed. In addition, your concerns were forwarded to Regional personnel for consideration.

8. **A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to cross-reference the statutory definition for "person" to expand the regulated community to include any individual, firm, corporation, partnership or association, and any agent, assignee, trustee, executor, receiver or representative thereof and replace the term "individual" with "person" to reduce the burden on officers when trying to locate the person who moored a watercraft unlawfully. The Commission anticipated the proposed rulemaking would have little or no impact on the regulated community.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.

The rule establishes watercraft mooring restrictions, prohibitions, and exceptions. The rule was adopted to reduce public nuisances created by unattended watercraft that block or impede access to developed facilities form party platforms in congested areas, or leak deleterious substances (i.e., fuel or excrement) into the waterway. The rule was adopted to address long-term mooring issues occurring at Site 6 and other areas along

Lake Havasu, particularly around the Island that is joined to the mainland by the London Bridge. The narrow navigation channel that separates the Island from the mainland is very congested and lined with commercial businesses and day-use only beaches. The proposed amendment will reduce public confusion as jurisdictional regulations would be similar and more concise. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule.

12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.

The Department proposes to amend R12-4-526 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Require a person to remove abandoned or submerged watercraft within 72 hours of written or verbal notification.
- Establish the owner of the watercraft is responsible for all towing and storage fees resulting from the removal of the watercraft from waters.

R12-4-527. TRANSFER OF OWNERSHIP OF A TOWED WATERCRAFT

1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(1), 5-324(E)(9), 5-399, 5-399.01, 5-399.02, and 5-399.03

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish transfer of ownership requirements for a watercraft in possession of a towing company. The rule was adopted to establish requirements necessary to ensure compliance with A.R.S. § 5-399 *et al*, which prescribes the basic procedures that allow a towing company to take ownership of a watercraft left unclaimed. On an annual basis, the Department transfers approximately 30 watercraft to towing companies under this rule.

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

Overall, the rule is enforced as written; however, the Department is aware of enforcement issues relating to the notification required under A.R.S. § 5-399(A), which states, "If a towing company tows a watercraft, the towing company shall provide written notification by mail to the owner and lienholder, if known, of the watercraft's location. The towing company shall obtain the owner and lienholder information pursuant to section 5-324." Because the statute does not provide a time-frame, the towing company is not obligated to notify the owner/lienholder of the impounded watercraft's location in a timely manner, which results in the accrual of additional impound fees. By the time the towing company notifies the owner/lienholder, storage fees can become so great that the owner/lienholder opts to give the watercraft to the towing company in lieu of paying those fees. In addition, a towing company will wait until they have a buyer before applying for a certificate of number. Under A.R.S. § 5-399(B), the towing company is required to submit an application for ownership of the abandoned watercraft within 15 days of mailing the notice to the owner/lienholder if the watercraft is not

removed. The Department proposes to amend the rule to require a towing company to request the owner/lienholder information within 15 days of possession of the watercraft and to require the towing company to apply for a certificate of number for watercraft that are not removed from the towing companies' premises within 30 days of mailing the notice to the owner/lienholder. These time-frames mirror the times given to the towing company under statute. The Department also proposes to amend the rule to establish a \$25 penalty fee for failure to comply with the 15 and 30-day time-frames. These amendments are authorized under A.R.S. § 5-399.03 which states, "The department may adopt rules to carry out the requirements of this article and establish fees to implement this article."

6. Clarity, conciseness, and understandability of the rule.

Overall, the rule is clear, concise, and understandable. The rule is written in the active voice so it will be understood by the general public. However, the Department proposes to amend the rule to provide the rule requirements in the order in which the process occurs and follow-up requirements applicable to the towing company to make the rule more concise. In addition, the Department proposes to amend the rule to remove the reference to the Director as the person who receives the documentation required to transfer ownership of a watercraft in a towing company's possession as it is the Department's watercraft program that will process the towing company's application.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rules is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to remove the requirement that the towing company present the watercraft to a regional office and remove unnecessary statutory references. The Commission anticipated the proposed amendments will benefit both the Department and the regulated community.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012
- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes transfer of ownership requirements for a watercraft in possession of a towing company. The rule was adopted to establish requirements necessary to ensure compliance with A.R.S. § 5-399 *et al*, which prescribes the basic procedures that allow a towing company to take ownership of a watercraft left unclaimed. The proposed amendments will have no impact on towing companies that are in compliance with statutory requirements. Towing companies that are not in compliance will pay a minimal penalty for failing to comply with statute and rule. However, the Department intends to conduct outreach activities designed to notice towing companies of the proposed amendment prior to presenting the Notice of Proposed Rulemaking to the Commission. The Department believes that once the proposed amendments indicated in the report are made, the rule will impose the least burden and costs to persons regulated by the rule and will benefit members of the public whose watercraft are towed.

- 12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

- 13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule complies with A.R.S. § 41-1037. The certificate of number described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-527 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Require a towing company to request the owner/lienholder information within 15 days of possession of the watercraft.
- Require a towing company to apply for a certificate of number for watercraft that are not removed from the towing companies' premises within 30 days of mailing the notice to the owner/lienholder.
- Establish a \$25 penalty fee for failure to comply with the 15 and 30-day time-frames.
- Remove the reference to the Director as the person who receives the documentation required to transfer ownership of a watercraft in a towing company's possession.

R12-4-528. WATERCRAFT CHECKPOINTS

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(5), 5-311(A)(7), 5-391(B), 5-391(C), and 5-393

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish watercraft checkpoint requirements. The rule was adopted to establish the procedures a watercraft operator must follow when directed to stop by a law enforcement officer and is necessary to ensure public health and safety and to prevent the misuse of public recreational areas. On an annual basis, the Department participates in approximately six multi-agency watercraft checkpoints to screen for unsafe or impaired watercraft operators to ensure public safety on state waterways or to gather demographic, statistical, and compliance information related to watercraft activities.

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

The rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. All peace officers of the state (including city and county) are charged with enforcement. Officers can check for rule compliance when routinely patrolling the waterways of Arizona.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

- 7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.**

No written criticisms were received.

- 8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to ensure conformity with Arizona Administrative Procedure Act and the Secretary of State's rulemaking format and style requirements and standards. Because the amendments were nonsubstantive in nature, the Commission anticipated the amendments would have no impact on the Department or regulated community.

- 9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.**

The Department did not receive any analyses.

- 10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.**

In 2011, the rulemaking moratorium was extended by way of Executive Order 2011-05. Item #4 of the Executive Order exempted any state agency whose agency head is not appointed by the Governor. The Governor's office confirmed this exemption applied to the Game and Fish Commission. The report was approved by G.R.R.C. at the June 7, 2011 Council Meeting, which stated the Department anticipated submitting the final rules to the Council by February 2015. The Department completed the course of action indicated in the previous five-year review report as follows:

- Notice of Rulemaking Docket Opening: 18 A.A.R. 2505, October 5, 2012
- Notice of Proposed Rulemaking: 18 A.A.R. 2437, October 5, 2012
- Public Comment Period: October 5, 2012 through November 5, 2012

- G.R.R.C. approved the Notice of Final Rulemaking at the March 5, 2013 Council Meeting
- Notice of Final Rulemaking: 19 A.A.R. 597, March 29, 2013

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule establishes watercraft checkpoint requirements. The rule was adopted to establish the procedures a watercraft operator must follow when directed to stop by a law enforcement officer and is necessary to ensure public health and safety and to prevent the misuse of public recreational areas. The Department believes the rule imposes the least burden and costs to persons regulated by the rule.

- 12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

- 13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule does not require the issuance of a regulatory permit, license, or agency authorization.

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

No action.

R12-4-529. NONRESIDENT BOATING SAFETY INFRASTRUCTURE FEES; PROOF OF PAYMENT; DECAL

- 1. General and specific statutes authorizing the rule, including any statute that authorizes the agency to make rules.**

Authorizing statute: A.R.S. §§ 5-302 and 5-311(A)(1)

Implementing statute: A.R.S. §§ 5-311(A)(5), 5-321, 5-326, and 5-327

2. Objective of the rule, including the purpose for the existence of the rule.

The objective of the rule is to establish the nonresident boating safety infrastructure fee (NBSIF) schedule, based on the length of the watercraft, and the manner in which a non-resident recreational watercraft owner may provide acceptable proof of payment of the fee. The rule was adopted pursuant to A.R.S. § 5-326, which requires nonresident owners of watercraft who establish this state as the state of principal operation to pay an additional boating safety infrastructure fee assessed pursuant to A.R.S. § 5-327 before placing that watercraft on the waters of this state. The nonresident fees set forth in this rule are the same fees that existed in statute before A.R.S. § 5-327 was amended. On an annual basis, the Department collects approximately \$2,681,840 in revenue from Nonresident Boating Safety Infrastructure Fees.

3. Effectiveness of the rule in achieving its objective, including a summary of any available data supporting the conclusion reached.

The rule appears to be effective in achieving the objective stated above. At the beginning of each rule review, Department employees are asked to provide comments and suggested rule changes for any areas of concern. Responses indicate the rule is understandable and applicable. In addition, the Department has not received any written comments for this rule. The Department believes this data indicates the rule is effective.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency.

The rule is consistent with and is not in conflict with statutes and rules. Statutes and rules used in determining consistency include A.R.S. Title 5, Title 17, and A.A.C. Title 12, Chapter 4 and Title 33 C.F.R. Chapter 1, which is relevant to this rule because A.R.S. § 5-311 requires all rules within this Article to comply with U.S. Coast Guard regulations.

5. Agency enforcement policy, including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement.

Overall, the rule is enforced as written and the Department is not aware of any problems with the enforcement of the rule. However, when the rule was first adopted, the Department authorized different options as proof of payment of the fee. The Department has since determined the most efficient option is to indicate the NBSIF fee was paid is on the registration decal. As a result, the Department proposes to amend the rule to remove references and requirements relating to the Arizona NBSIF Decal.

6. Clarity, conciseness, and understandability of the rule.

The rule is clear, concise, and understandable. The rule is logically organized and generally written in the active voice so it will be understood by the general public.

7. Summary of the written criticisms of the rule received by the agency within the five years immediately preceding the Five-year Review Report, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on scientific or reliable principles, or methods, and written allegations made in litigation and administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute, or beyond the authority of the agency to enact, and the conclusion of the litigation and administrative proceedings.

No written criticisms were received.

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule.

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to establish NBSIF fees by rule. These fees were previously prescribed under A.R.S. § 5-327. Because the exempt rulemaking only established NBSIF fees that were previously prescribed by statute, the Commission anticipated the proposed rule would have little or no impact on the regulated community.

9. Any analysis submitted to the agency by another person regarding the rule's impact on the competitiveness of businesses in this state as compared to the competitiveness of businesses in other states.

The Department did not receive any analyses.

10. If applicable, how the agency completed the course of action indicated in the agency's previous five-year review report.

Not applicable; the rule was adopted July 1, 2013 and did not exist when the previous five-year review report was completed.

- 11. A determination after analysis that the probable benefits of the rule within this state outweigh the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective.**

The rule has resulted in the estimated economic, small business, and consumer impacts as stated in the final rulemaking package approved by G.R.R.C. on March 5, 2013. The rule was amended to establish NBSIF fees by rule. These fees were previously prescribed under A.R.S. § 5-327. Because the exempt rulemaking only established fees that were previously prescribed by statute, the Commission anticipated the proposed rule would have little or no impact on the regulated community.

- 12. A determination that the rule is not more stringent than corresponding federal law unless there is statutory authority to exceed the requirements of that federal law.**

Federal law is not directly applicable to the subject of the rule. The rule is based on state law.

- 13. For a rule adopted after July 29, 2010, that require the issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037.**

The rule complies with A.R.S. § 41-1037. The Arizona Watercraft Registration Decal described in the rule falls within the definition of "general permit" as defined under A.R.S. § 41-1001(11).

- 14. Course of action the agency proposes to take regarding the rule, including the month and year in which the agency anticipates submitting the rule to the Council if the agency determines it is necessary to amend or repeal an existing rule or make a rule. If no issues are identified for a rule in the report, an agency may indicate that no action is necessary for the rule.**

The Department proposes to amend R12-4-529 as indicated below and anticipates submitting the Notice of Final Rulemaking to the Council by December 2017, provided the current moratorium is not extended or the Commission is granted permission to pursue rulemaking to implement the recommendations made in this report:

- Remove references and requirements relating to the Arizona NBSIF Decal.